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GUIDE TO ADMINISTRATIVE HEARINGS

**FOR CITATIONS ISSUED UNDER THE HEAVY-DUTY
VEHICLE INSPECTION PROGRAM**

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What Is This *Guide* About?

This *Guide to Administrative Hearings* is designed to provide a brief description of the Administrative Hearing Office of the Air Resources Board (ARB) and a party's right to an administrative hearing to review citations issued under the heavy-duty vehicle inspection program (HDVIP). It is provided for information only and is not intended to provide legal advice or to address every situation that may arise in the administrative hearing process. Please seek the advice of a competent attorney for answers to specific legal questions. The information provided herein is current through the date of publication, April, 2005.

An administrative hearing offers a person who has been cited by the ARB the opportunity to have a neutral hearing officer review the citation and determine whether it was properly issued. The hearing officer is responsible for holding hearings on issues presented for consideration, establishing an evidentiary record and issuing a written decision based on the record. An administrative hearing is a formal hearing, where each side of a dispute is given the opportunity to testify, submit documents or other evidence, cross-examine witnesses and make legal arguments in support of its case.

Where Can I Find the Rules That Apply to These Proceedings?

The rules governing administrative hearings for review of HDVIP citations are located at Title 17, California Code of Regulations, section 60075.1 through 60075.45. Copies of the procedures can be obtained from the Administrative Hearing Office, public libraries, or from the ARB website at: <http://www.arb.ca.gov/aho/ahp.htm>.

What Is the Administrative Hearing Office?

The Administrative Hearing Office is an independent administrative unit of the ARB, with responsibility for holding administrative hearings. Administrative law judges (ALJs), who are attorneys and members of the California Bar with specialized education and experience in air quality law and the administrative hearing process, sit as hearing officers and conduct all hearings. The Administrative Hearing Office is located at 1001 I Street, Suite 107, Sacramento, California 95814 and its telephone and fax numbers are (916) 327-2032 and (916) 322-2647 (fax).

Who Can Request an Administrative Hearing and When?

Any person who has been issued a citation (citee) under the heavy-duty vehicle inspection program, Title 13, California Code of Regulations, sections 2180 through 2188 may request an administrative hearing. A citee must request a hearing within 45 days of receiving the citation by personal delivery or certified mail.

How Do I Request a Hearing?

The citee does not have to file any specific form to request a hearing. The Administrative Hearing Office, however, has preprinted forms available that outline the information that is required for all requests to be considered complete. These forms may be obtained by contacting the Administrative Hearing Office or by going to the ARB's website, at <http://www.arb.ca.gov/msprog/hdvp/hdvp.htm>. On the web page scroll down to Administrative Hearings information.

Regardless of whether a preprinted form is used, all requests for hearing must contain the following information:

- the citation number and date of issuance of the citation;
- the date the party received the citation by personal service or registered mail;
- the correct business address of the party; the name and address of the party's representative, if any;
- a brief statement of the facts describing the circumstances surrounding issuance of the citation; and
- the grounds for objecting to the citation.

All documents must be mailed to the following address:
Air Resources Board, Administrative Hearing Office,
P.O. Box 2815, Sacramento, California 95812. No filing fee is required. Once the Administrative Hearing Office finds a request for hearing to be complete, it will issue a notice of filing to all parties. If the request is deficient, the hearing office will issue a notice of deficiency to the party who filed the request for hearing. The notice of deficiency will explain what the requesting party needs to do to complete the filing. In general, a party must correct all noted deficiencies within 10 days or prior to the expiration of the 45-day time period in which to file a Request for Hearing, whichever is later.

Do I Have a Right to Be Represented?

A party has the right to be represented at hearing but the procedures do not require it. Also, the procedures **do not** require that a party's representative be an attorney. While a party has the right to be represented, the party is responsible for the costs of retaining representation.

Are Interpreters or Other Forms of Accommodation Available?

A party or witness who is not reasonably proficient in English has the right to request that a certified interpreter be made available for hearing. The Administrative Hearing Office is responsible for securing the interpreter. The hearing officer will determine based on equitable consideration whether the requesting party shall bear the costs of the interpreter.

The Administrative Hearing Office shall provide reasonable accommodation for all parties and witnesses in need.

What Is Discovery?

Discovery is a legal term meaning the ways in which a party may obtain information about the case. In civil litigation in California courts, discovery may take many forms, including depositions, interrogatories, requests for production of documents, document exchange, or requests for admissions. The administrative hearing procedures for review of citations, however, limits the use of discovery to requests for production or inspection of documents, things, statements or other types of writing relevant to the issues for hearing.

Any party claiming its request for discovery has not been complied with may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested discovery. If a party fails, without good cause, to comply with the order, the hearing officer may, among other things, seek to have the party found to be in contempt and draw adverse inferences against that party regarding the information that was not provided.

What are Motions and When Should They be Filed?

The hearing procedures provide that a party may file

prehearing motions with the hearing officer. A motion is a request that the hearing officer take some particular action in the case. The most commonly filed motions include:

- **motion for continuance or extension of time:** a request seeking to delay the start of the a hearing or to provide additional time to submit a required filing;
- **motion to dismiss:** a request that the case be dismissed because even if all of the facts alleged in the citation are accepted as true, no violation has occurred;
- **motion for summary determination of issues:** a request that the case be decided without the need for a full evidentiary hearing because there are no facts in dispute.

In general, a motion must be filed at least 15 days prior to the scheduled first day of hearing. A party opposing a motion has, in general, five days to file a response to the motion. If no response is filed, or if a party does not appear at any hearing scheduled on the motion, the hearing officer may grant the motion without further hearing. If the hearing officer grants a motion to dismiss or a motion for summary determination, no hearing will be held. The rules governing motions are found at Title 17, section 60075.6, 60065.10, and 60075.25, California Code of Regulations.

When and Where Are Hearings Challenging a Citation Held?

The time and place for hearing is set by the Office of Administrative Hearings in a notice of hearing, which must be served on the parties at least 30 days prior to the date scheduled for hearing. In general, hearings for citations issued in Northern

California are heard at the Administrative Hearing Office, located at 1001 I Street, Suite 107, Sacramento, California. Hearings for citations issued in Southern California are, in general, heard at the Southern California office of the ARB, located at 9528 Telstar Avenue, El Monte, California.

Are Telephone Hearings Permitted?

Yes. Any party may request to participate in a hearing by telephone. The request must be filed at the earliest opportunity. A request is typically granted, unless objected to by the opposing party for good cause.

What Normally Occurs at a Hearing?

A hearing challenging a citation is held before a hearing officer who will consider the issues that have been raised in the request for hearing filed by the citee. In general, the central issue to be addressed on the merits is whether the citation has been properly issued and a violation properly charged.

At the time set for hearing, the hearing officer will call the case by name and number. Each party and, if applicable, its representative will be asked to state their names and addresses for the record. All hearings are recorded by tape recorder. Copies of the recordings or a transcript of the recordings are available upon request. The requesting party is responsible for paying the costs of duplication.

At the hearing, each party will be given the opportunity to present evidence in support of its position on the issues that have been raised -- that is, "to tell its side of the story." If there are facts that all agree on, the hearing officer should be advised of these agreed upon facts, or "stipulations," at the beginning of the

hearing. Such stipulated facts will be taken as true without the need for either party to introduce such evidence through oral testimony or documentary exhibits. Stipulations save everyone time and should be seriously explored before the hearing.

Who Bears the Burden of Proof at a Hearing Challenging the Issuance of a Citation?

The hearing officer may allow each party the opportunity to make an opening statement, describing the evidence to be presented and summarizing why the hearing officer should decide the case in its favor. The ARB staff has the initial “burden of going forward” and presenting evidence. Through testimony of witnesses or introduction of other evidence, the ARB has the burden of establishing a prima facie case -- that is, evidence that sufficiently establishes that a violation has been committed and that a citation has been properly issued. The party contesting the citation has the right to “cross-examine” witnesses who have testified on behalf of the ARB and to object to any documentary evidence that the ARB seeks to introduce into the record. If the ARB fails to establish a prima facie violation, the citation is subject to a motion to dismiss.

After presentation of the ARB’s case, the party contesting the citation has the right to present evidence challenging the validity and propriety of the citation and may present evidence regarding any affirmative defenses that it has raised. An affirmative defense is an assertion by the citee that raises new facts and arguments that, if true, would excuse the party from liability. The citee raising an affirmative defense has the burden of presenting sufficient evidence to establish that the defense has merit.

After both parties have presented their respective cases, they will be afforded the opportunity to present closing arguments. In

general, this will be done orally at the time of the hearing. On occasion, the hearing officer may allow the parties to submit closing arguments in writing after the hearing. In such cases, the hearing will close at the time the written arguments are submitted.

What Types of Evidence Is Considered?

Formal rules of evidence are not strictly followed in administrative hearings. In general, the hearing officer will admit evidence that is relevant, not unduly repetitious, or highly prejudicial. The test for admissibility is whether the evidence is the type of evidence that responsible persons typically rely on in conducting serious affairs. At hearing, the parties may introduce all types of evidence, including oral testimony from witnesses, testimony through affidavits or declarations, and documents. Testimony from witnesses is taken only under oath or affirmation. A party may be required to establish a foundation for introduction of a document to establish its authenticity and trustworthiness.

Hearsay evidence is a statement or conduct made outside of the hearing. For example, a statement made at a service facility by a mechanic to the owner of a heavy-duty vehicle about the condition of the vehicle is likely to be hearsay. Such evidence may only be used to supplement or explain other evidence in the record, but is typically not sufficient, in and of itself, to support a finding by the hearing officer unless it would be admissible over objection in a civil court action. To avoid hearsay problems, a party should have witnesses either appear at the hearing or have them submit affidavits or declarations under oath.

Any affidavits or declarations that a party intends to use in place of oral testimony must be filed with the Administrative Hearing Office and served on the other parties to the hearing 20 or more days prior to first day of hearing. The affidavits or

declarations must include notice that the party intends to use such affidavits or declarations in place of oral testimony at hearing. See section 60075.35, title 17, CCR. Declarations or affidavits may be used at hearing unless the opposing party specifically objects to its introduction without having the opportunity to cross-examine the prospective witness.

How Do I Get Witnesses to Appear at the Hearing or Obtain Documents from Third Parties?

Typically witnesses will appear or produce evidence voluntarily upon request. However, in those instances when a witness refuses or may be reluctant to appear, a party may have a subpoena issued. A subpoena is an order directing a person to attend the hearing as a testifying witness and/or custodian of documents. A subpoena provides notice of the time and place where testimony is to be taken and may also identify documents the witness is to bring to the hearing. Subpoenas are issued on request of a party and may be issued by the hearing officer assigned to the case, the executive officer and general counsel of the ARB, or an attorney representing the citee. Upon receipt of the subpoena, the requesting party is responsible for having it served on the intended witness and the other party to the proceeding.

When Will the Hearing Officer Issue a Decision?

All proceedings are submitted at the close of the hearing and the hearing officer is required to issue a decision within 30 days after the record is closed. All decisions are required to set forth findings of fact and determinations of law.

What If I Disagree with the Hearing Officer's Decision?

If a party disagrees with the hearing officer's decision and

order, the party may request that the decision and order be reconsidered by the executive officer of the ARB. The party disagreeing with the decision must file the request for reconsideration within 20 days after issuance of the decision and order. The request for reconsideration must be filed with the executive officer, with copies served on all parties, including the Administrative Hearing Office. The request must be based on one or more of the following grounds:

- The hearing officer acted without or in excess of his or her powers when issuing the order or decision;
- The order or decision was procured by fraud;
- The evidence received by the hearing officer does not justify the findings of fact;
- The citee discovered new material evidence which the citee could not, with reasonable diligence, have discovered and produced at the hearing;
- The findings of fact do not support the order or decision; or
- The order or decision is contrary to applicable law.

What Can I Do If I Disagree with the Final Decision of the ARB?

A party disagreeing with a final decision may seek judicial review of the decision in the superior court under section 1094.5 of the Code of Civil Procedure. A party may seek judicial review even though it has not requested reconsideration by the executive office. The citee may file for judicial review within 60 days from the date the decision becomes final. The state board may seek to

enforce a final order in accordance with applicable law or decision in superior court.

Who Can I Call If I Have Questions?

Questions about the administrative hearing procedures or the status of a case should be addressed to the hearing clerk at P.O. Box 2815, 1001 I Street, Suite 107, Sacramento, California 95812-2815 of the Administrative Hearing Office or you may call (916) 327-2032 or fax (916) 322-2647. You may also direct questions by e-mail at aho@arb.ca.gov. Conversations with the hearing officer about the merits of a case should be avoided, but if necessary will be permitted ONLY IF all persons involved in the case are present in person or by telephone. If you deem it necessary to speak to the hearing officer, please first contact the hearing clerk who will make all appropriate arrangements.